Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Indiana Bell Telephone	)	
Company, Incorporated (Ameritech Indiana)	)	WCB/Pricing File No. 07-07
And The Ohio Bell Telephone Company	)	
(Ameritech Ohio) for Pricing Flexibility	)	
Under §69.727 of the Commission's	)	
Rules for the Specific MSAs	)	

ORDER

Adopted: May 18, 2007 **Released: May 18, 2007**

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On January 12, 2007, Ameritech Indiana and Ameritech Ohio (Ameritech) filed a petition[1] seeking pricing flexibility for special access and dedicated transport services located in the Youngstown-Warren, OH Metropolitan Statistical Area (MSA) and channel termination services in the Kokomo, IN MSA pursuant to sections 1.774 and 69.701 *et seq*. of the Commission's rules.[2] We received one opposition to Ameritech's petition.[3] As detailed below, the Commission established the parameters for granting pricing flexibility for special access and dedicated transport services and channel termination services in its *Pricing Flexibility Order*.[4] In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent local exchange carriers (LECs) as competition develops in the market for interstate access services "to ensure that our own regulations do not unduly interfere with the operation of these markets."[5] For the reasons that follow, we now grant Ameritech's petition.

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[1] *See* Petition of Indiana Bell Telephone Company, Incorporated (Ameritech Indiana) and The Ohio Bell Telephone Company (Ameritech Ohio) for Pricing Flexibility Under §69.727 of the Commission's Rules for the Specific MSAs (filed Jan. 12, 2007) (Petition); *Pleading Cycle Established for Ameritech Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing No. 07-07, Public Notice, DA 07-278 (Wireline Comp. Bur. rel. Jan. 29, 2007). A list of the specific services for which Ameritech seeks pricing flexibility can be found in the Appendix to this order.

[2] 47 C.F.R. §§ 1.774, 69.701 *et seq*.

[3] *See* Comments of Sprint Nextel Corporation, WCB/Pricing No. 07-07 (filed Feb. 13, 2007) (Sprint Nextel Opposition).

[4] *See Access Charge Reform,* CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[5] *Pricing Flexibility Order*, 14 FCC Rcd at 14224, para. 1.

II. BACKGROUND

2. To recover the costs of providing interstate access services, incumbent LECs charge interexchange carriers (IXCs) and end users for access services in accordance with the Commission's Part 69 access charge rules.[6] In the *Access Charge Reform First Report and Order*, the Commission adopted a market-based approach to access charge reform, pursuant to which it would relax restrictions on incumbent LEC pricing as competition emerges.[7] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[8] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[9]

3. The framework the Commission adopted in the *Pricing Flexibility Order* grants progressively greater flexibility to LECs subject to price cap regulation as competition develops, while ensuring that: (1) price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.[10] In addition, the reforms are designed to facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.[11]

4. In keeping with these goals, the Commission established a framework for granting price cap LECs greater flexibility in the pricing of interstate access services once they make a competitive showing, or satisfy certain "triggers," to demonstrate that market conditions in a particular area warrant the relief they seek. Pricing flexibility for special access and dedicated transport services[12] is available in two phases, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the

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[6] 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. *Compare* 47 C.F.R. § 69.114 *with* 47 C.F.R. § 69.106. Special access services employ dedicated facilities that run directly between the end user and an IXC point of presence (POP), the physical point where an IXC connects its network with the LEC network. Charges for special access services generally are divided into channel termination charges and channel mileage charges. Channel termination charges recover the costs of facilities between the customer's premises and the LEC end office and the costs of facilities between the IXC POP and the LEC serving wire center. *See* 47 C.F.R. § 69.703(a). Channel mileage charges recover the costs of facilities (also known as interoffice facilities) between the LEC serving wire center and the LEC end office serving the end user. *See Pricing Flexibility Order*, 14 FCC Rcd at 14226-27, paras. 8-10.

[7] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*), *aff'd, Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998).

[8] *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, para. 14.

[9] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 4.

[10] *Id*. at 14225, para. 3. The Commission instituted price cap regulation for the Regional Bell Operating Companies (RBOCs) and GTE in 1991, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions. *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20, paras. 262-79 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation. *Pricing Flexibility Order,* 14 FCC Rcd at 14224, para. 1 n.1.

[11] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 3.

[12] For purposes of pricing flexibility proceedings, "dedicated transport services" refer to services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Id*. at 14234, para. 24 n.54. These services are defined in 47 C.F.R. § 69.2(oo) (direct-trunked transport), § 69.2(qq) (entrance facilities), and § 69.2(ss) (tandem-switched transport).

study area.[13] Pricing flexibility for channel termination services[14] is also available in two phases, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the study area.[15]

5. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day's notice, contract tariffs[16] and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.[17] To protect those customers that may lack competitive alternatives, a price cap LEC receiving Phase I flexibility must maintain its generally available, price cap-constrained tariffed rates for these services.[18] To obtain Phase I relief, a price cap LEC must meet triggers designed to demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue.[19] In particular, to receive pricing flexibility for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.[20] In both cases, the price cap LEC also must show, with respect to *each* wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[21]

6. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC's end office and an end user customer. A competitor collocating in a LEC end office continues to rely on the LEC's facilities for the channel termination between the end office and the customer premises, at least initially, and thus is more susceptible to exclusionary pricing behavior by the LEC.[22] As a result, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[23] Again, the LEC also must

[13] *See* 47 C.F.R. § 22.909(a) (definition of MSA). *See also Pricing Flexibility Order,* 14 FCC Rcd at 14261, para. 76 (pricing flexibility will be granted to price cap LECs within the non-MSA parts of a study area if they satisfy the applicable triggers throughout that area).

[14] For pricing flexibility purposes, also, a channel termination between a LEC end office and a customer premises is defined as a "dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic." 47 C.F.R. 69.703(a)(2).

[15] *See supra* n.13.

[16] A contract tariff is a tariff based on an individually negotiated service contract. *See Competition in the Interstate Interexchange Marketplace,* CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5897, para. 91 (1991) (*Interexchange Competition Order*); 47 C.F.R. § 61.3(o). *See also* 47 C.F.R. § 61.55 (describing required composition of contract-based tariffs).

[17] *Pricing Flexibility Order,* 14 FCC Rcd at 14287-88, para. 122.

[18] *Id.* at 14234-35, para. 24.

[19] *Id.* at 14274, para. 94.

[20] *Id.* at 14274-77, paras. 95-98; 47 C.F.R.§ 69.709(b).

[21] 47 C.F.R. § 69.709(b).

[22] *Pricing Flexibility Order*, 14 FCC Rcd at 14278-79, paras. 102-103.

[23] *Id*. at 14280-81, paras. 105-06; 47 C.F.R.§ 69.711(a).

demonstrate, with respect to each wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[24]

7. Phase II Pricing Flexibility. A price cap LEC that receives Phase II relief is allowed to offer dedicated transport and special access services free from the Commission's Part 69 rate structure and Part 61 price cap rules. The LEC, however, is required to file, on one day's notice, generally available tariffs for those services for which it receives Phase II relief.[25] To obtain Phase II relief, a price cap LEC must meet triggers designed to demonstrate that competition for the services at issue within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period. To obtain Phase II relief for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[26]

8. Higher thresholds apply for obtaining Phase II pricing flexibility relief for channel terminations between a LEC end office and an end user customer. To obtain such relief, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 65 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.[27] To obtain Phase II relief for channel terminations to end users, the LEC also must demonstrate, with respect to each wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[28]

9. Competitive Showing. Pricing flexibility may be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.[29] For special access and dedicated transport services and channel termination services the incumbent must identify: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; and (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center.[30] In addition to these three requirements, the petitioner must show either: (A) that the percentage of wire centers in which competitors have collocated and use competitive transport satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC;[31]

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[24] 47 C.F.R. § 69.711(a).

[25] *Pricing Flexibility Order,* 14 FCC Rcd at 14301, para. 153; 47 C.F.R. § 69.727(b)(3).

[26] *Pricing Flexibility Order*, 14 FCC Rcd at 14299, paras. 148-49; 47 C.F.R. § 69.709(c).

[27] *Pricing Flexibility Order*, 14 FCC Rcd at 14235, para. 25; 47 C.F.R. § 69.711(c).

[28] 47 C.F.R. § 69.711(c).

[29] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

[30] 47 C.F.R. § 1.774(a)(3)(i)-(iii).

[31] 47 C.F.R. § 1.774(a)(3)(iv)(A)-(B).

or (B) that the percentage of total base period[32] revenues that are attributable to the wire centers upon which the petitioner relies satisfies the applicable pricing flexibility triggers.[33]

III. DISCUSSION

10. Ameritech seeks Phase I pricing flexibility in the Youngstown-Warren, OH MSA for dedicated transport and special access services, other than channel terminations between its end offices and end user "customer premises," and Phase II pricing flexibility in the Kokomo, IN MSA for channel terminations between its end offices and end user "customer premises" listed in its petition and set forth in the Appendix of this order.[34] As noted above, pricing flexibility may be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.[35]

11. Ameritech has demonstrated compliance with the requirements for Phase I and Phase II pricing flexibility. Ameritech provided sufficient information to demonstrate that it meets the applicable pricing flexibility triggers for the relief it has requested. As explained in greater detail below, to make this showing, Ameritech assigned wire centers to individual MSAs and identified wire centers within each MSA where service providers have obtained collocation with alternative facilities other than Ameritech-provided transport.[36] Ameritech also gathered revenue data and assigned it either to dedicated transport and special access services (other than channel terminations to the end user), or to channel terminations between an end user's premises and the Ameritech end offices.[37]

12. Ameritech identified the MSAs that qualify for pricing flexibility by: (1) assigning wire centers to individual MSAs and identifying wire centers within each MSA where service providers have obtained collocation with alternative facilities other than Ameritech-provided transport; (2) calculating end-user channel termination revenue, together with all other special access and dedicated transport revenue earned in each MSA; (3) calculating end-user channel termination revenue, together with all other special access and dedicated transport revenue, that was attributable to each collocated wire center within the MSA; and (4) calculating the percentage of such revenue earned in the collocated wire centers against the total revenues earned in the MSA from such services.[38]

13. In order to identify wire centers with collocation, Ameritech examined its billing records to determine those customers that were billed monthly recurring charges for collocation floor space and other applicable collocation rate elements.[39] Ameritech then performed a physical inventory to validate the accuracy of the billing information.[40] To confirm that the competitors were using transport facilities

[32] For price cap LECs, the "base period" is the 12-month period (i.e., the calendar year) ending six months before the effective date of the LECs' annual access tariffs. 47 C.F.R. § 61.3(g).

[33] The revenues applicable to this requirement are those generated by the services for which the incumbent seeks relief. 47 C.F.R. § 1.774(a)(3)(iv)(B).

[34] *See* Petition, Appendix A. *See also infra* Appendix.

[35] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

[36] Petition, Appendix D at 1.

[37] *See id*.

[38] *Id*. at Appendix C.

[39] *Id*. at Appendix D at 2.

[40] *See id*.

owned by a transport provider other than Ameritech, Ameritech used the billing information or physically verified that the competitor had transport facilities owned by a non-Ameritech provider.[41] In accordance with our rules, Ameritech served a copy of its petition on each of the collocating carriers upon which it relied, including, for each collocator, the information about that party upon which Ameritech relied in its petition.[42]

14. To ascertain revenue associated with special access and dedicated transport services and channel termination services, Ameritech gathered data for the twelve-month period ending December 31, 2005, from its internal databases.[43] Ameritech directly mapped the following rate elements to each relevant wire center: channel terminations and entrance facilities, channel mileage terminations, direct trunk transport mileage, direct trunk transport fixed, other recurring charges (e.g., multiplexing), and non-recurring charges.[44] Ameritech then further aggregated the revenue by Circuit Location (CKL) number to determine whether the channel terminations were attributable transport to another LEC wire center, IXC point of presence (POP) or an end user's premises.[45] For interoffice channel mileage, Ameritech attributed 50 percent of the revenue to each wire center at the two ends of each individual circuit; for SONET rings, the mileage revenue was evenly allocated to the nodes in the ring.[46] For direct-trunked transport mileage, Ameritech attributed 50 percent to each wire center at the two ends of each individual circuit.[47] For non-recurring charges, where the wire center was not known, revenue was allocated based on channel termination revenue.[48]

15. After reviewing Ameritech's verification method as described in the petition and the data provided in the public and confidential versions of the petition, we find that Ameritech has met the applicable triggers in section 1.774 and Part 69, Subpart H of the Commission's rules.[49] The method used by Ameritech to capture and assign revenues to particular services and wire centers is consistent with the method the Wireline Competition Bureau has approved in prior Ameritech pricing flexibility applications.[50] Based upon a review of the information submitted, and having received no opposition addressing whether or not Ameritech met the pricing flexibility triggers,[51] we conclude that Ameritech

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[41] *See id*.

[42] *Id*. at Appendix E; *see also* 47 C.F.R. § 1.774(e)(1)(ii).

[43] The billing system used for this process was the Ameritech Long Distance Industry Services (ALDIS) Data Warehouse database which is based on the Carrier Access Billing System (CABS). Petition, Appendix D at 3.

[44] Petition, Appendix D at 4.

[45] *Id*. at Appendix D at 7.

[46] *Id*. at Appendix D at 4-7.

[47] *Id*. at Appendix D at 4.

[48] *Id*.

[49] 47 C.F.R. §§ 1.774 and 69.701-69.731.

[50] *See*, *e.g., Ameritech Operating Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing File No. 06-8, 21 FCC Rcd 5172, 5177-78, paras. 13-15 (Wireline Comp. Bur. 2006).

[51] Sprint Nextel agrees that Ameritech met the applicable triggers for a grant of pricing flexibility but opposes the petition because it believes the applicable triggers "fail to accurately measure the true state of competition in the special access and dedicated transport markets." Sprint Nextel Opposition at 1.

has satisfied its burden of demonstrating that it has met the applicable requirements for each of the various services in the MSAs for which it requests relief.

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED that, pursuant to section 1.774 of the Commission's rules, 47 C.F.R. § 1.774, the *Pricing Flexibility Order,* and the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the petition filed by Ameritech is GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale
Associate Chief, Wireline Competition Bureau

APPENDIX
SERVICES QUALIFYING FOR PRICING FLEXIBILITY

Trunking Services Basket (Includes entrance facilities, direct trunked transport, flat-rated portion of tandem-switched transport, and the optional features and functions associated with these services.)

Voice Grade
LT-1
LT-3
Switched Sonet
Signaling
SS7
Telecom Relay Service

Special Access Basket (Includes channel terminations between the serving wire center and the end user's premises, and the optional features and functions associated with these services.)

Metallic
Telegraph Grade
Direct Analog
Program Audio
Video (TV Analog, Digital, ASVS, AMVS, WAVS, SCVS)
AIT Base Rate Service
AIT DS1
AIT DS3
Optical Carrier Network (OCN) 3, 12, 48, 192 Point-to-Point
AIT OC-3, 12, 48, 192 Dedicated Ring
Sonet Xpress Service
GigaMAN® (Gigabit Ethernet Metropolitan Area Network)
Multi-Service Optical Network (MON)
DecaMAN® (10 Gigabit Ethernet Metropolitan Area Network) ***
WaveMAN® (Wavelength Metropolitan Area Network) ***

*** High Cap and DDX – Special service category